In the Supreme Court of the United States.

OCTOBER TERM, 1976.

No. 76-2451

THOMAS HURLEY,
PETITIONER,

v.

UNITED STATES OF AMERICA,
RESPONDENT.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

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Reference to Opinion Below.

The opinion of the United States Court of Appeals for the First Circuit is not yet reported. The opinion is appended hereto.

Jurisdiction.

This is the appeal of a criminal case. Jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. § 1254(1).

The opinion was entered June 29, 1976. A motion to enter late a petition for rehearing filed on July 19 was denied on August 13, 1976.

Question Presented for Review.

Whether a so-called master affidavit in support of a search warrant for 14 different locations is valid and may support an inference of continuing violations in a majority of such locations, where facts in support of continuing violations are alleged only as to a minority of said locations.

Constitutional Provision Involved.

The Fourth Amendment to the Constitution of the United States is found in volume one of the United States Code. It provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Statutory Provision Involved.

United States Code, Title 18:

§ 1955. Prohibition of illegal gambling businesses.

"(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined not more than $20,000 or imprisoned not more than five years, or both.

"(b) As used in this section —

"(1) "illegal gambling business" means a gambling business which —

"(i) is a violation of the law of a State or political subdivision in which it is conducted;

"(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

"(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

. . . . . .

Statement of the Case.

The petitioner, Thomas Hurley, was convicted after a jury trial in District Court for the District of Massachusetts, upon an indictment charging himself and one Doherty and five others on three jointly tried indictments for violating 18 U.S.C. § 1955, which prohibits certain illegal gambling businesses. The government's case was primarily based upon the results of a wiretap that was conducted between June 1 and June 15, 1971, on the telephone used by one of the defendants,

Victor Santarpio. Selected conversations overheard on that wiretap allegedly between Santarpio and each of the other defendants were introduced into evidence. In addition, evidence seized during the execution of search warrants at various locations where individual defendants were found was also introduced.

The government presented two types of evidence to the jury with respect to Hurley. The first consisted of evidence concerning a search, conducted pursuant to a warrant, of 585 Boulevard, in the city of Revere, on November 13, 1971. Hurley was present at that address when the search was made, along with a codefendant, Joseph Doherty. This was the first time their identities became known. This search revealed various items later identified by an expert witness for the government as gambling paraphernalia used in a bookmaking operation. There was nothing in the items seized to connect Doherty and Hurley with any of the other codefendants. Hurley filed a motion to suppress this evidence. The motion was denied.

The only other type of information that the government relied upon which mentioned Hurley was a tape made in June of four telephone conversations overheard pursuant to the wiretap, between one of the codefendants (Victor Santarpio) and the petitioner — who was at a telephone number listed to one Glixman and established by New England Telephone Company records to be located at 585 Boulevard. The only other contact between Hurley, his codefendant Doherty and the other defendants in the case was approximately four telephone calls between Hurley and Santarpio in which Hurley provided race results of that particular day to Santarpio.

The petitioner filed a motion for a judgment of acquittal at the close of evidence in the District Court, which was denied. On appeal, the Circuit Court held that there was sufficient evidence to support a conviction under § 1955.

Reasons for Granting the Writ.

The Petitioner was Deprived of his Constitutional Rights under the Fourth Amendment, when a Search Warrant, which Lacked Probable Cause, was Improvidently Issued.

> "The present case illustrates how the mere weight of lengthy and vague recitals takes the place of reasonably probative evidence of the existence of crime."

The quotation from the dissenting opinion of Mr. Justice Douglas in *United States* v. *Ventresca*, 380 U.S. 102, 117 (1965), epitomizes the appellant's argument in respect to the affidavit which was the basis for the search warrant herein.

It was perhaps this lengthy and vague recital that led the Circuit Court into its "misapprehension of fact," as the appellant euphemistically termed it, in addressing a petition for rehearing to the Circuit Court.

The petition was late filed. It was denied in an order of August 13, 1976.

Nevertheless, the Circuit Court, in the same order of August 13, changed the wording of the opinion in an attempt to mitigate this "factual misapprehension."

The misapprehension is vital. The change in wording does not cure the defect, which the appellant deems fatal to the validity of the search warrant affidavit.

The affidavit in question sought authority to search fourteen locations. Before the Circuit Court, the appellant jointly with one Doherty and together with a codefendant, Lung, maintained that the information in respect to the two locations was too stale to support a showing of probable cause for search. There was a five-month time gap. The affidavit in

November, 1971, was based on telephone conversations intercepted in June, 1971.

In answer to this staleness argument, the Court said in its opinion *as originally published*:

> "In the present case the affidavits for the search warrants for the two locations in question were part of a master affidavit which was submitted in support of warrants for several other locations as well. This affidavit reported numerous intercepted calls during June, 1971 from the Delano Avenue address to each of the locations (including the two locations whose search is challenged here). With regard to each of the other locations there was ample additional information which, as noted earlier, clearly showed continued gambling operations in force at least through the last week of October, 1971." (Opinion, p. 20.)

The order of the Circuit Court dated August 13 changed the word "each" to "many" in the last quoted sentence so that it now reads:

> "With regard to many of the other locations there was ample additional information which, as noted earlier, clearly showed continued gambling operations in force at least through the last week of October, 1971." (App. 20a.)

THIS WAS NOT SO. IT IS NOT SO.

The "master affidavit," so-called, sought warrants to search 14 locations. Information as to six locations* was updated. Eight locations lacked such updating. By updating, appellant means, the five months interval between the wiretap and the search was spanned by the showing of gambling activity at said location reasonably prior to the search.

Seriatim, the affidavit may be summarized on this point as follows:

Locus	*Address*	*Information Updated*		*Affidavit paragraph*
1	58 Delano Avenue		No	6
2	63 Bickford Avenue	Yes		7
3	1578 No. Shore Road	Yes		8
4	243 Cushman Avenue	Yes		9
5	585 Boulevard		No	10
6	23A Tyler Street		No	11
7	38 Graves Road		No	12
8	40 Kingman Avenue		No	13
9	68 Whitin Avenue		No	14
10	85 Willow Street		No	15
11	120 Lynnway	Yes		16
12	85 Whitin	Yes		17
13	141 Pleasant Street		No	18
14	475 Ferry Street	Yes		19

*In designating six as "updated," appellant gives the "benefit of the doubt" to even the slightest indicium of updating.

Thus the Court's statement (as changed):

> "with regard to many of the other locations there was ample additional information which . . . clearly showed continued gambling operations in force at least through the last week of October, 1971,"

is patently incorrect.

In logic, as in mathematics, equivalents may be substituted.

If we, then, substitute precise figures (to correspond to the facts of the case) for the indefinite words of the opinion — the pertinent portion would read:

> In the present case the affidavits for the search warrants for the two locations in question were part of a master affidavit which was submitted in support of warrants for TWELVE other locations as well. This affidavit reported numerous intercepted calls during June, 1971 from the Delano Avenue address to FOURTEEN of the locations (including the two locations whose search is challenged here). With regard to many of the TWELVE locations there was ample additional information which, as noted earlier, clearly showed continued gambling operations in force at least through the last week of October, 1971. (Substituted words emphasized.)

Keeping the footnote (*supra*) in mind, how many is many?

The Court's opinion then cogently states your petitioner's position:

> "this additional information obviously cannot serve to demonstrate probable cause for the two challenged locations. . . ." (App. 20a.)

The petitioner must then distinguish the Court's conclusion that this (information)

> "can serve as an indication of the protracted and continuous nature of the operations under investigation." *Ibid.*

As to six locations, I concede.
As to eight locations, I deny.

The Court then adds:

> "and in conjunction with the . . . numerous intercepted calls to the two locations, can serve to demonstrate the probability of a continuing violation." *Ibid.*

This begs the question to be proven. The calls were made in June — five months before the search.

The *Durham* case (*Durham* v. *United States*, 403 F. 2d 190 (9th Cir. 1968)), which the Circuit Court cites in support of the last quoted sentence (*supra*), is obviously distinguishable on its facts. *Durham* involved a two-year counterfeiting operation and the nature of the property sought (large offset printing presses, plates, etc.) would indicate a continuity of location.

In this case the usual gambling paraphernalia is sought — records, betting slips, telephones, sports information papers, etc. — all readily mobile, or capable of easy translation, using translation in its basic sense of carry away.

Even the affidavit itself shows this, where in paragraph 17 in reporting the substance of a wiretapped conversation, it says:

". . . there is discussion of the fact that four or five offices are 'hot' and new locations will have to be found." (App. 40a.)

In the *Ventresca* case (380 U.S. 102, 108 (1965)), the Court says:

"affidavits for search warrants, such as the one involved here, must be tested and interpreted by magistrates and courts in a commonsense and realistic fashion. They are normally drafted by nonlawyers in the midst and haste of a criminal investigation."

But herein, — the affiant is not a small-town police officer, but a specially trained bureau agent of seven and one-half years' experience, who knows what he MUST state and HOW to state it WHEN he has the FACTS necessary.

The words of Chief Justice Hughes written almost a half-century ago are still as cogent today.

"The proceeding by search warrant is a drastic one. Its abuse led to the adoption of the Fourth Amendment, and this, together with legislation regulating the process, should be liberally construed in favor of the individual. . . . The statute requires that the judge or commissioner issuing a search warrant . . . must be satisfied 'of the existence of the grounds of the application or that there is probable cause to believe their existence.' . . . He must take proof to that end. . . . The warrant must state 'the particular grounds or probable cause for its issue. . . .' While the statute does not fix the time within which proof of probable cause must be taken by the judge or commissioner, it is *manifest* that the proof must be of facts so closely related to the time of the issue of the warrant as to justify a finding of probable cause *at that time.*

. . . . . .

"The commissioner has no authority to rely on affidavits which have sole relation to a different time and have not been brought down to date or supplemented so that they can be deemed to disclose grounds existing when the new warrant is issued. . . . That determination, as of that time, cannot be left to mere inference or conjecture." (Citations omitted; emphasis supplied.)

Sgro v. *United States*, 287 U.S. 206, 210-211 (1932).

Conclusion.

For the above reasons, a writ of certiorari should issue.

Respectfully submitted,

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Appendix.

United States Court of Appeals
For the First Circuit

No. 75-1225

UNITED STATES OF AMERICA,

APPELLEE,

v.

JEROME DiMURO, ROBERT MANTICA, and LOUIS COLANGELO,

DEFENDANTS, APPELLANTS.

No. 75-1226

UNITED STATES OF AMERICA,

APPELLEE,

v.

ROLAND LUNG,

DEFENDANT, APPELLANT.

No. 75-1227

UNITED STATES OF AMERICA,

APPELLEE,

v.

VICTOR SANTARPIO,

DEFENDANT, APPELLANT.

No. 75-1228

UNITED STATES OF AMERICA,

APPELLEE,

v.

JOSEPH DOHERTY and THOMAS HURLEY,

DEFENDANTS, APPELLANTS.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
[HON. ANDREW A. CAFFREY, *U.S. District Judge*]

Before COFFIN, *Chief Judge*,
ALDRICH and MCENTEE, *Circuit Judges*.

Avram G. Hammer, George F. Gormley, by appointment of the Court, *Charlotte Anne Perretta*, by appointment of the Court, *David Rossman*, by appointment of the Court, and *Owen F. Brock*, with whom *Gorfinkle & Hammer, Judith E. Diamond, Harrington and Gormley*, and *Keating, Perretta & Pierce* were on brief, for appellants.

Kenneth A. Holland, Attorney, Department of Justice, with whom *James N. Gabriel*, United States Attorney, *Jeffrey M. Johnson*, Special Attorney, Boston Strike Force, and *Shirley Baccus-Lobel*, Attorney, Department of Justice, were on brief, for appellee.

June 29, 1976

MCENTEE, *Circuit Judge*. After trial to a jury appellants were convicted on a one count indictment charging them with conducting an illegal gambling business in violation of 18 U.S.C. § 1955.[1] On this appeal they raise a number of claims variously challenging the applicability of § 1955 to their acts and the sufficiency of the evidence, as well as claims directed to the propriety of certain evidentiary admissions

[1] Specifically, appellants were charged with conducting the illegal operation for the period June 1 through November 13, 1971. One of the essential requirements of an "illegal gambling business" under § 1955 is that the operation must involve "five or more persons who conduct, finance, manage, supervise, direct, or own all or part" of the business. 18 U.S.C. § 1955(b)(1)(ii). An initial indictment, returned September 12, 1972, charged appellants DiMuro, Colangelo, Lung and Santarpio plus sixteen other defendants with a violation of § 1955. On April 19, 1973, acting on motions to dismiss and to suppress evidence (derived from allegedly illegal wiretaps), the United States Magistrate stayed all proceedings pending a decision by the Supreme Court in *United States v. Giordano*, 416 U.S. 505 (1974). The Court decided that case on May 13, 1974. On September 3 of that year, because certain counts in the indictment were based on information from telephone interceptions which were unlawful in light of *Giordano*, the district court dismissed the indictment against all the defendants without prejudice. A subsequent indictment against all the appellants in the present case was returned on August 22, 1974.

in the course of trial.[2]

Appellants' first contention is that the trial court erred in ruling that the government did not have to prove their various gambling operations were a "single business,"[3] and that the government's evidence failed to show the existence of a single gambling operation. This issue is best examined in light of the factual circumstances of the present case. The government's evidence at trial was derived from two main sources: wiretapped conversations from a telephone line used by appellant Santarpio covering the period June 3 through June 15, 1971; and a large quantity of gambling paraphernalia seized from five separate locations as the result of searches carried out on November 13, 1971.

In regard to the wiretaps, appellant Santarpio was a participant in each of the twenty-five conversations introduced at trial. In one set of intercepted conversations he called appellants Hurley and Doherty at 585 Boulevard in Revere, Massachusetts, and provided them with information on various horses; in turn he was informed by the two appellants about results from certain racetracks in New York, New Jersey, Delaware and elsewhere. In a second set of calls Santarpio was shown to have telephoned appellants Colangelo, DiMuro and Mantica who allegedly ran a gambling operation out of the Handy Lunch Shop and the Marsh Club (which were adjacent to one another on American

[2] We treat most of the issues on this appeal as if raised by all the appellants, since in large part they have adopted one another's arguments by reference. Where certain issues are relevant only to particular appellants we so indicate.

[3] This issue dominated the initial portion of the trial. On the fifth day the trial court ruled as follows:

"I am going to make it a rule of the case, the government's burden of proof is not to prove a single gambling business.

". . . .

". . . The question is not how many different businesses there are, as long as a defendant is in business with the people on trial, he is in trouble."

The court also refused appellants' requests for jury instructions to the effect that the government had to prove the existence of a single gambling business beyond a reasonable doubt.

Legion Highway in Revere). In these conversations Santarpio asked for and obtained race results, and received the betting "line" for certain professional sports. *See United States* v. *Schaefer*, 510 F.2d 1307, 1311 & n.6 (8th Cir.), *cert. denied*, 421 U.S. 978 (1975). He also placed a wager with appellant DiMuro, and a "lay off" bet[4] with appellant Mantica. There were also discussions of how much was owed Santarpio as a result of various bets certain of these appellants previously had made with him. A third set of conversations was between Santarpio and appellant Roland Lung at 23A Tyler Street in Boston. In one instance Santarpio called Lung to inform him that a horse in a certain race was a favorite and to tell him the odds he ought to accept on the horse. In other instances Lung telephoned Santarpio to convey race results and to "lay off" certain wagers with him. In one of the calls from Lung there was a discussion of how much he and Santarpio owed one another as the result of several days' wagering. In sum, the wiretap evidence tended to show Santarpio as a pivotal figure with whom the other appellants exchanged race results and betting information and with whom certain of the appellants "laid off" bets.

Appellants contend that while the betting slips and other paraphernalia seized from the four locations noted above may indicate separate small scale gambling operations at

[4] Special Agent Whitcomb, Chief of the FBI Gambling Unit Laboratory headquarters, described the "layoff" process in bookmaking operations as follows:

> "It is a method by which a bookmaker will wager similar to the way of the bettor. If he has heavy action on one side, it gives him an imbalanced book, should his bettors' selection win, he would have a big pay out. If he cannot by changing the line of the odds thus attract attention to the other side, to even his action, his wagering on both sides of the events, he can resort to a lay off. It is nothing more than for him to go and bet with another bookmaking operation, in the same way he is being bet into. [This way] he has insurance against his losses [and] he can cut down his risks."

See United States v. *Schaefer*, 510 F.2d 1307, 1311 n.5 (8th Cir.), *cert. denied*, 421 U.S. 978 (1975).

each of these places, there was no unified gambling business. Specifically, they claim that the transmittal of gambling information and the sporadic acceptance of lay off wagers are insufficient to merge what were unconnected bookmaking operations into a § 1955 offense, and that there was not sufficient evidence to connect together the various groups of appellants who dealt separately with Santarpio into an unified business relationship.

These claims cannot prevail. The exchange of line and other gambling information are necessary and useful functions in a gambling enterprise and persons who carry out such functions have been held to be engaged in "an illegal gambling business." *United States* v. *Joseph*, 519 F.2d 1068, 1071 (5th Cir. 1975), *cert. denied*, 44 U.S.L.W. 3471 (U.S. Feb. 24, 1976); *United States* v. *Schaefer*, *supra* at 1311; *United States* v. *Ceraso*, 467 F.2d 653, 656 (3d Cir. 1972). Similarly persons who make and accept lay off bets have been found to perform an indispensible task in the maintenance of an illegal gambling business. *United States* v. *Thomas*, 508 F.2d 1200, 1205 (8th Cir.), *cert. denied*, 421 U.S. 947 (1975); *United States* v. *Sacco*, 491 F.2d 995, 1002-03 (9th Cir. 1974) (en banc); *see United States* v. *Schaefer*, *supra* at 1312.

With regard to the sufficiency of the evidence on this issue, close examination of the transcribed conversations between the various appellants and Santarpio discloses discourse dealing with the exchange of line and other gambling information and/or lay off betting. While the evidence with respect to some of these activities is stronger for certain of the appellants than for others, there is a reasonably clear indication that each of them frequently conferred with Santarpio concerning various aspects of a gambling business. Viewing the evidence as whole and in the light most favorable to the government, we are satisfied that all

the appellants were systematically involved in a gambling the appellants were systemically involved in a gambling business. *See United States* v. *Schaefer, supra* at 1312-13; *United States* v. *Sacco, supra* at 1004.[5]

Appellants also challenge as unlawful the June, 1971 intercepts on the telephones used by Santarpio, and claim that the evidence obtained therefrom should have been suppressed. There are two aspects to their challenge. First, they contend that then Attorney General Mitchell improperly delegated his power to authorize an application seeking approval of the intercepts in question. Specifically, appellants point to the language of 18 U.S.C. §2516 which provides that an Assistant Attorney General may be "specially designated" to authorize such an application. They note that in the present case the memorandum initialed by Attorney General Mitchell provided that Assistant Attorney General Wilson was "specially delegated" to make the authorization. They contend that this choice of language (i.e. "delegate" instead of " designate") amounted to an illegal transfer of authority to an assistant which only the Attorney General himself was empowered to exercise. However, we do not find this claim to be persuasive. There was no misidentification of the Assistant Attorney General whom the Attorney

[5] Certain of the appellants also contend that even if their assertedly separate gambling operations in different locations would suffice to constitute a violation of § 1955, it was improper for the trial court to allow evidence of gambling activities from each of the separate locations to be admitted against all appellants. Specifically, they claim that the gambling paraphernalia seized in November from each of the locations should have been admitted only against those persons actually involved. This claim, however, cannot prevail. Alleged violators of § 1955 need not know that the activity they are engaged in also involved numerous other participants. *United States* v. *Brick*, 502 F.2d 219, 224 (8th Cir. 1974). The fact that various of the appellants may have had separate relationships with Santarpio does not make their activity an independent business unassimilable into one overall operation. The legislative history of § 1955 indicates that Congress was aware that "bookmaking" does not operate as a unified, centrally coordinated and controlled business enterprise. *United States* v. *Schaefer, supra*, at 1311-12. Given that each appellant was involved in the network of gambling activity revolving around Santarpio, it was not improper for the trial judge to admit evidence from each of the component operations against all appellants whose operations were, in effect, interdependent. *Id.; cf. United States* v. *Bobo*, 477 F.2d 974, 988 (4th Cir. 1973), *cert. denied*, 421 U.S. 909 (1975).

General sought to designate. *See United States* v. *Chavez*, 416 U.S. 562 (1974). The fact that the word "delegate" was used is of little consequence and does not constitute a failure to comply fully with the requirements in Title III such as would render the interception of wire or oral communications "unlawful." *See id.* at 574-75.

Appellants also contend that the application for the telephone intercepts did not set forth an adequate justification as to why the wiretaps were needed and that it failed to provide a full and complete statement as to why other investigative procedures would not suffice. *See* 18 U.S.C. § 2518(1)(c) and (3)(c). We do not find merit in these claims.

An examination of the affidavit presented to the district court in support of an order for a wire intercept and a pen register[6] on telephone facilities at 58 Delano Avenue, Revere, indicates there was adequate basis for the court to have found probable cause that the facilities in question were being used in activities that violated § 1955. The affidavit, prepared by Special Agent Lucksted of the FBI, set forth information received from three confidential informants who were indicated to have provided reliable information on unlawful gambling activities on numerous previous occasions. Each of the informants was known by the agent to be engaged in gambling operations, and information provided by each was based upon personal observations and contacts with the unlawful gambling enterprise allegedly conducted at 58 Delano Avenue.

One of the informants was said to have indicated that between March and May, 1971 certain named individuals (one Shane and one Plotkin)[7] who were personally known

[6] A pen register records the number dialed from a particular telephone. *See United States* v. *Schaefer, supra* at 1310.

[7] Although the affidavit did not set forth the names of any of the appellants in the present case, it did state that in addition to the named individuals who

to him were using for their gambling operation the telephones at the location in question; that the informant himself had "exchanged . . . wagering information" with both men; and that he had placed bets with them over the telephone for a number of months as recently as May, 1971. From discussions with Shane and Plotkin this informant had learned that their operation grossed in excess of $10,000 business a day and that they laid off bets with other Massachusetts bookmakers. A second confidential informant provided joint information about the April and May, 1971 period to another FBI special agent who in turn had conveyed this information to the affiant, agent Lucksted. The informant, through his contacts in the gambling business, had been furnished with phone numbers (corresponding to those at 58 Delano Avenue) to call in order to place bets on sporting events. The informant had placed bets with two different persons at these numbers on several occasions, as recently as the second week of May, 1971.

The information of a third informant was also relayed to Lucksted through another FBI agent.[8] This informant, who knew Shane and Plotkin, had placed bets with both individuals and had been present when they discussed their bookmaking operation. He had also placed bets over the telephone facilities at 58 Delano Avenue as recently as the third week of May, 1971.

The affidavit in question thus clearly provided "some of

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were committing a violation of 18 U.S.C. § 1955 there were "others as yet unknown" also involved in the commission of this offense.

[8] Appellants argue that the information received from informants two and three could not be relied on to support probable cause since it had not been conveyed directly to the affiant, agent Lucksted. We find little merit to this claim. *See United States* v. *McCoy*, 478 F.2d 176, 179 (10th Cir.), *cert. denied*, 414 U.S. 828 (1973); *United States* v. *DeCesare*, 502 F.2d 604, 607 n.6 (7th Cir. 1974). The district court was fully apprised as to the basis for the original informants' information — viz. their personal observations and contacts. Moreover each of the informants was known to the affiant to be involved in the gambling business.

the underlying circumstances from which the officer concluded that the informant . . . was 'credible' or his information 'reliable'." *Aguilar* v. *Texas*, 378 U.S. 108, 114 (1964). Each of the informants was shown to have been reliable on previous occasions and the circumstances from which the agents concluded that the information each provided was credible was set forth in detail.[9] In sum, the information provided by these informants was sufficient to justify a finding of probable cause for the issuance of an intercept order. *See United States* v. *Armocida*, 515 F.2d 29, 36 (3d Cir. 1975); *United States* v. *McHale*, 495 F.2d 15, 17-18 (7th Cir. 1974).

We also do not agree with appellants' assertion that the wiretapping application did not provide an adequate statement as to why other investigative procedures would not succeed. *See* 18 U.S.C. § 2518(1)(c) and (3)(c).[10] The Lucksted affidavit indicated that although information from government informants could pinpoint 58 Delano Avenue as the site of a gambling business, the informants would not testify for fear of their own safety. Agent Lucksted also explained that on the basis of his experience and that of his colleagues in investigating gambling operations, searches of individuals and of the situs of the gambling business would be unlikely to produce evidence necessary to prove all the elements of a § 1955 violation since records frequently are not kept; that whatever records are kept may be de-

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[9] Moreover, the information from the informants, which was based on personal observation and experience, involved events reasonably close in time to the date of the requested intercept order. Accordingly, appellants' contention that the affidavit relied on "stale" information cannot avail. *See United States* v. *Guinn*, 454 F.2d 29, 36 (5th Cir.), *cert. denied*, 407 U.S. 911 (1972); *see also United States* v. *Steeves*, 525 F.2d 33, 38 (8th Cir. 1975); *United States* v. *Johnson*, 461 F.2d 285, 287 (10th Cir. 1972); *State* v. *Tella*, 113 R.I. 303, 321 A.2d 87 (1974).

[10] Section 2518(1)(c) provides that a wiretap application must include "a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous."

stroyed before the law enforcement officers are able to seize them; and that records which have been seized have generally been insufficient to identify all participants.

While we think that a court ruling on the sufficiency of a wiretap application can "consider the nature of the alleged crimes" and give some "weight to the opinion of . . . investigating" officers "that in the described circumstances other means . . . might be counterproductive if pursued," *In re Dunn*, 507 F.2d 195, 197 (1st Cir. 1975) (per curiam), nevertheless we believe than an agent's bare conclusory statement that normal investigative techniques are generally unproductive in dealing with gambling operations is insufficient to meet § 2518(1)(c)'s requirements. *United States* v. *Kalustian*, 529 F.2d 585 (9th Cir. 1976). If mere conclusions by the affiant based solely on past experience that gambling conspiracies are "tough to crack" were held sufficient to authorize a wiretap, the government would need to show "only the probability that illegal gambling is afoot to justify electronic surveillance." *Id.* at 589.

In the present case, however, the affidavit does not rest on such assertions alone. It states, in addition, that since 58 Delano Avenue was located in a quiet residential area, any "fixed physical surveillance" would be "impractical"; that because Delano Avenue was "only one block long" any strange vehicle "passing by this address with any frequency would draw immediate attention"; and that because the building at the address in question was a one-story residential house where the curtains were "usually closed" it was "impossible to see inside" from a "fixed or moving" observation post. Although the factual underpinnings of the affidavit could have been more substantial, we believe it "provided a sufficient factual statement to enable the court to find as it did, that normal investigative procedures reasonably appeared unlikely to succeed if tried . . . ." *In re Dunn*,

supra at 197.

Appellants also contend that the district court erred in denying their request for an evidentiary hearing to determine whether evidence offered by the government was tainted by various allegedly unlawful wire interceptions.[11] We do not agree. Four interceptions are involved in appellants' claim. None of these intercepts, however, was specifically directed at any of the appellants, and materials from all the intercepts were furnished to the defense. Apart from contending that information from the intercepts might have formed the basis for search warrants at certain of the gambling locations — a claim we reject, *see* discussion *infra* — appellants are unable to suggest any specific basis in support of their claim that the government's evidence at trial might have been tainted by these interceptions.[12] Although the government has the ultimate burden of persuasion to show that its evidence is untainted, *Alderman* v. *United States*, 394 U.S. 165, 183 (1969), nevertheless appellants must come "forward with specific evidence demonstrating taint." *Id.* Under the circumstances of the present case, where appellants failed to provide some minimal demonstration of a basis for their allegation of taint, we cannot say

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[11] The intercepts referred to by appellants are:

1. a court authorized interception on telephone facilities used by Anthony M. St. Laurent conducted from July 22 to August 2, 1970;
2. an intercept (conducted at the same time [*i.e.* June, 1971] as the intercept in the present case) over telephones at 63 Beckford Avenue; information from this intercept was recited in the affidavits for the search warrants at 23A Tyler Street and 585 Boulevard;
3. the July, 1971 intercepts at the Handy Lunch and Marsh Club which the government concedes were unlawful and information from which was included in affidavits accompanying search warrants for the two locations, *see* discussion *infra*; and
4. four additional interceptions conducted during August to October, 1971 pursuant to gambling investigations.

[12] In this regard appellants made only a very general claim to the trial court, viz. that "there were so voluminous wire taps that they pervade the entire case so that because of the pervasive nature of the information obtained by the government in these wiretaps it is now impossible to determine without the most difficult inquiry as to whether any item of evidence in the possession of the government is derived from the illegal wiretaps or not."

it was improper for the trial court to decline to hold the extensive evidentiary hearings which would have been required.

Appellants also claim it was improper for the trial court to allow the government to introduce a composite tape containing only those conversations which it wanted to play for the jury at trial.[13] They further contend that the government's presentation of only twenty-five out of a total of 668 intercepted gambling conversations was inherently unfair because it left "an inescapable impression that the [composite trial tape] was merely a sampling of what constituted continuous dealings among the defendants." However, these claims cannot prevail. The admissibility of recordings of intercepted conversations or parts thereof is a matter committed to the sound discretion of the trial court.[14] *Gorin* v. *United States*, 313 F.2d 641, 652 (1st Cir. 1963); *Todisco* v. *United States*, 298 F.2d 208, 211 (9th Cir. 1961), *cert. denied*, 368 U.S. 989 (1962). And the use of a composite trial tape of particular intercepted conversations which the government considered relevant to the trial has been permitted. *See, e.g., United States* v. *Lawson*, 347 F.Supp. 144, 147-49 (E.D. Pa. 1972). In the present case appellants concede that the entire corpus of intercepted conversations, involving fourteen reels of tape "were replete with gambling conversations. . . . ," and we see no basis for a claim that the government was required to present to the jury every conversation intercepted pursuant to a court authorized wire interception order.[15] Moreover, while there could be circumstances where selectivity in the preparation of a composite trial tape might be prejudicial, here appellants had access to the original tapes and were given ample opportunity on cross-examination to bring out the total number of intercepted conversations in which each appellant was personally involved.

[13] Appellants also urge that it was improper for the jury to be provided a transcript of the edited tape at trial. Specifically, appellants contend that because the transcript bore the names and initials of the alleged participants in the left margin, it was impermissibly suggestive. We do not agree with this contention. The use of "an accurate transcript of all conversations believed relevant with the speakers identified . . ." has been allowed. *See, e.g., United States* v. *Lawson*, 347 F.Supp. 144, 148 (E.D. Pa. 1972). In the present case the composite tape was arranged in segments so as to show each appellant's participation in the conversations. Prior to the playing of each segment the government introduced testimony as to the identity of the principal participant and all those conversations were then played for the jury. (This procedure was followed with respect to all of the conversations except one, involving appellants Mantica and Santarpio.)

Prior to the distribution of the transcript the trial court instructed the jury that it was only "[f]or the purpose of assisting you in following the conversation . . ."; that the presence of names and initials on the left side of the transcripts "is not evidence of the identity of the persons speaking . . . [which] is something for you to determine on the basis of your listening to the tapes and certain voice exemplars and the testimony of certain witnesses. . . ." Under these circumstances we cannot say that the presence of appellants' names in the tape transcript was unfairly prejudicial. *See United States* v. *Hall*, 342 F.2d 849, 853 (4th Cir.), *cert. denied*, 382 U.S. 812 (1965).

[14] Although only the composite tape was played for the jury, all the recorded conversations were received in evidence. And appellants were afforded the opportunity to examine the original tapes of all the intercepted conversations.

Nor do we find merit in appellants' claim that the arrangement of the conversations on the composite trial tape was improper because it created an "illusion of unity among the parties" which did not exist.[16] Conversations involving a particular appellant were grouped together to facilitate the presentation of identification testimony. Had conversations not been aggregated in this way there would have been a proliferation of identifications which would have involved "the inconvenience and confusion of stopping the tape between each speaker and permitting [testimony] to

[15] Appellant Santarpio urges that 18 U.S.C. § 2518(8)(a) which provides in pertinent part that "the recording of the contents of any wire or oral communication . . . shall be done in such way as will protect the recording from editing or other alterations" bars the presentation at trial of a composite tape. We are not persuaded of the merit of this claim. The primary purpose of § 2518(8)(a) is to ensure accuracy of recordings at the time of monitoring and to require sealing to deter alterations. *See, e.g., United States* v. *Poeta*, 455 F.2d 117, 121-22 (2d Cir.), *cert. denied*, 406 U.S. 948 (1972). The statute does not apply to the preparation of a trial tape of selected intercepted conversations whose accuracy is not at issue.

[16] Appellants' claim on this question attempts to reargue, at least in part, their contention that the government had to prove the existence of a single gambling business as opposed to an assortment of unconnected enterprises. We have, however, already rejected this claim. *See* discussion *supra*.

identify the next speaker," *Fountain* v. *United States*, 384 F.2d 624, 632 (5th Cir. 1967), *cert. denied*, 390 U.S. 1005 (1968), and this process might "possibly [have] caused prejudice to defendants by excessive repetition. . . ." *United States* v. *Lawson*, *supra* at 148. In sum, we cannot say the district court's handling of the use of the composite tape at trial was improper or amounted to an abuse of its discretion.[17]

Appellants also contend on a variety of grounds that the voice identifications at trial were unreliable and improper. Specifically, they complain that there was a considerable lapse of time between the interceptions and the identifications, and that certain of the identifications were tainted because based in part on conversations obtained through a wiretap in July, 1971 which was held to be illegal. We are not persuaded by either claim. With regard to appellant Santarpio (who was involved in all twenty-five conversations on the composite tape), the voice identification was made by Special Agent Kennedy who had spoken with Santarpio for an extended period on February 3, 1975, and more briefly on March 28 of that year. After the first conversation Kennedy listened to copies of the original intercepted conversations and identified Santarpio's voice. Santarpio contends that since there was a four-year interval between the recording of the intercepted conversations and the voice comparison, the identification was necessarily unreliable. However, Fed. R. Evid. 901(b)(5) provides that "[i]dentification of a voice, whether heard firsthand or through . . .

[17]Appellants also contend it was improper for the trial court not to order the deletion of obscene language from the recordings of the intercepted conversations and the trial tape transcript. Specifically, they claim that the inclusion of such language was irrelevant to any matter before the jury and "could function only to create the impression that the speakers were men of bad character." To say in the light of present day mores that appellants were unduly prejudiced by a failure to clean up their language is frivolous, not to mention the burden the government might have run to avoid the inference that it was omitting something material. *Cf. United States* v. *Whitaker*, 372 F. Supp. 154, 164 (M.D.Pa.), *affirmed* 503 F.2d 1400 (3d Cir. 1974).

electronic . . . recording, by opinion based upon hearing the voice *at any time* under circumstances connecting it with the alleged speaker" is sufficient for the admissibility of voice identification evidence. (Emphasis added.) The trial was held before the Rules took effect, but they provide useful guidance; appellant Santarpio cites no cases indicating that different considerations should govern this type of situation prior to the Rules. The two confrontations between agent Kennedy and the appellant provided an adequate basis for the identification testimony to be submitted to the jury.[18]

Appellants Mantica and DiMuro challenge the admissibility of their voice identifications principally on the ground that these identifications were based on conversations overheard through illegal intercepts. The relevant facts are as follows. Conversations involving both appellants had been intercepted in concededly unlawful wiretaps.[19] At trial, however, the government presented voice identifications that it claimed were based on independant grounds. Specifically, agent Daly testified that he had spoken with appellant DiMuro at his home for a short period on December 22, 1971, and again approximately a year later at the federal courthouse. Daly likewise spoke with Mantica at his residence in November, 1971 and twice at the courthouse nearly

[18]Santarpio also argues that the fact that he invoked his right to remain silent on February 3, 1975, bars the utilization of voice identification testimony based on conversations (with agent Kennedy) subsequent to the exercise of his fifth amendment privilege. However, this claim must fail. The government is entitled to use subsequent non-testimonial utterances for purposes of a voice identification, since Santarpio can have no reasonable expectation of privacy as to the sound of his voice. *United States* v. *Dionisio*, 410 U.S. 1, 14 (1973).

[19]During parts of July, 1971 the government monitored telephone facilities at the Handy Lunch and the Marsh Club in Revere. Appellants DiMuro and Mantica were found to have participated in certain of the intercepted conversations. On January 9, 1972, agent Daly had testified to a federal grand jury that the above interceptions indicated appellants DiMuro, Manti and Colangelo were involved in a gambling operation at the two locations. The government stipulated at trial that these intereceptions were unlawful.

a year later. In the case of both appellants agent Daly testified that his voice identification derived from a comparison of the voice he heard during the course of his personal confrontation with each of them and an analysis of the intercepted conversations introduced at trial. Daly conceded, however, that he had been exposed to the illegally intercepted conversations. Appellants contend the possibility that this prior exposure may have affected Daly's identification of their voices renders the identification totally defective and inadmissible. We do not agree. Although the *content* of communications obtained from an illegal wiretap is subject to an evidentiary prohibition, *see Gelbard* v. *United States*, 408 U.S. 41 (1972), we do not think the exposure of agent Daly to appellants' voices from an illegal wiretap falls within that prohibition. "The physical characteristics of a person's voice, its tone and manner, as opposed to the content of a specific conversation, are constantly exposed to the public. . . . No person can have a reasonable expectation that others will not know the sound of his voice. . . ." *United States* v. *Dionisio*, *supra* at 14. Moreover, voice identification testimony may be based on hearing the voice *at any time* if the exposure occurs under circumstances connecting the voice to the speaker. Fed. R. Evid. 901(b)(5). Here, on several occasions agent Daly met with each appellant under circumstances where he could connect the voices to their persons, *see id.*, and consequently there was an adequate independent basis for his identification testimony.

With regard to the other appellants our examination of the record reveals nothing in their respective voice identification procedures that was "impermissibly suggestive." Agent Daly identified appellant Hurley's voice in the telephone conversations from the June, 1971 intercepts after a personal confrontation on August 19, 1974. As to appellants Colangelo and Doherty, voice exemplars were taken and agent Daly made voice identifications based on a comparison of these examplars with the intercepted conversations. We see no impropriety in this procedure.[20] *See, e.g.*, *United States* v. *Whitaker*, *supra* at 165; *United States* v. *Chiarizio*, 525 F.2d 289 (2d Cir. 1975).

With respect to appellant Lung we also think that there was sufficient evidence to show he was a participant in the conversations. In one intercepted conversation Lung, who had called Santarpio, identified himself by his first name ["Roland"] and upon request gave his home telephone number. A voice "exemplar was taken of that call" and also submitted to the jury. We do not agree with appellant's contention that because he allegedly has "marked racial speech characteristics" this procedure was "impermissibly suggestive and created a substantial likelihood of misidentification." "[I]t is clear beyond dispute that identification of a telephone caller may be established by circumstantial evidence" *United States* v. *Bozeman*, 495 F.2d 508, 510 (5th Cir. 1974), *cert. denied*, 422 U.S. 1044 (1975), which "may be as persuasive to identify the . . . party . . . as testimony" based on voice recognition. *United States* v. *Zweig*, 467 F.2d 1217, 1220 (7th Cir. 1972), *cert. denied*, 409 U.S. 1111 (1973).

Appellants also challenge the propriety of the searches at various locations and the admissibility of evidence seized therefrom. We examine the different claims separately. Appellants Colangelo, DiMuro, and Mantica contend that the items seized on November 13, 1971 from the Handy

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20 Appellants DiMuro, Mantica, and Colangelo also contend that their voice identifications were improperly introduced because there was no corroborating evidence of their identities apart from the identifications made by agent Daly. We are not, however, persuaded by this claim. Daly's voice identifications were unequivocal, and under such circumstances there would appear to be no need for corroborating evidence. *Cf. United States* v. *Bozeman*, 495 F.2d 508, 510 (5th Cir. 1974), *cert. denied*, 422 U.S. 1044 (1975).

Lunch and the Marsh Club as well as from 65 Endicott Avenue should have been suppressed because the supporting affidavits contained information derived from unlawful wire interceptions.[21] The government concedes that information from the telephone wiretaps which were subsequently held to be illegal, *see* n.1 *supra*, was included in the affidavits accompanying the search warrants for the Handy Lunch and Marsh Club locations. However, "inclusion in an affidavit of indisputably tainted allegations does not necessarily render the resulting warrant invalid. The ultimate inquiry on a motion to suppress evidence seized pursuant to a warrant is not whether the underlying affidavit contained allegations based on illegally obtained evidence, but whether, putting aside all tainted allegations, the independent and lawful information stated in the affidavit suffices to show probable cause." *United States* v. *Giordano*, 416 U.S. 505, 555 (1974) (Powell, J. concurring in part and dissenting in part). *See United States* v. *McHale*, *supra* at 17. In the instant case the affidavit also contained information supplied by a confidential informant which, standing alone, was adequate to show probable cause. The informant provided information based on personal observations that appellant DiMuro (with whom the informant was acquainted), and others were conducting a gambling business at the Handy Lunch and the Marsh Club from May until at least the last week of October, 1971; that he had placed bets over the telephone at the above locations as recently as the last week of October, 1971; and that during the same time period he had also

[21] These appellants also challenge the admission of this evidence on grounds of relevancy. Specifically, they contend that there is no showing of continuity between the wiretapped conversations in June, 1971 and the gambling paraphernalia seized in November, and that none can be presumed to exist. We need not pass upon this issue in detail, however, since the requirement that a gambling operation otherwise in violation of § 1955 be in operation for 30 days can also be satisfied alternatively, where, as here, the gross revenue exceeds $2,000 in a single day. *See* 18 U.S.C. § 1955(b)(1)(iii); *United States* v. *Schaefer*, *supra* at 1312 n.9; *cf. United States* v. *Bridges*, 493 F.2d 918, 922 (5th Cir. 1974).

observed gambling records there. The informant also stated on the basis of personal observation that as recently as the last week of October, 1971 appellants DiMuro, Mantica and others had moved from these locations but that appellant Colangelo was still operating there.[22] The affidavit also indicated that surveillance by law enforcement officials had disclosed that vehicles registered to a number of the appellants were present in the vicinity of the Handy Lunch.

With regard to the search warrant for 65 Endicott Avenue, unlawful wire interceptions played no part in the determination of probable cause which was predicated solely upon information supplied by the same confidential informant as above. Our examination of this affidavit likewise indicates ample basis for a finding of probable cause to issue a warrant. Accordingly, appellants' motions to suppress evidence seized from the three locations in question were properly denied.

Certain of the appellants also contend that the search warrants for 585 Boulevard and 23A Tyler Street were invalid because the information in the supporting affidavits was too "stale" to support a showing of probable cause. They point to the fact that the affidavit for the November, 1971 search is based primarily on intercepted conversations from the two locations gleaned from wiretaps and a pen register on the telephone facilities at 58 Delano Avenue in June, 1971. While we have observed that a warrant's validity depends in part on "the proximity or remoteness of the events observed," *Rosencranz* v. *United States*, 356 F.2d 310, 316 n.3 (1st Cir. 1966), nevertheless the determina-

[22] The affidavit also set forth an adequate indication of the informant's reliability, viz. that he was acquainted with gambling operations in the greater Boston area; that he had furnished reliable information regarding gamblers and bookmakers to FBI agents on 75 occasions within the previous two years — information which had been verified by other confidential sources or by independent investigation by the FBI and other law enforcement agencies.

tion of timeliness as an element in probable cause must be by the circumstances of each case. *Bastida* v. *Henderson*, 487 F.2d 860, 864 (5th Cir. 1973); *cf. Sgro* v. *United States*, 287 U.S. 206, 210-11 (1932). In the present case the affidavits for the search warrants for the two locations in question were part of a master affidavit which was submitted in support of warrants for several other locations as well. This affidavit reported numerous intercepted calls during June, 1971 from the Delano Avenue address to each of the locations (including the two locations whose search is challenged here). With regard to many of the other locations there was ample additional information which, as noted earlier, clearly showed continued gambling operations in force at least through the last week of October, 1971. While this additional information obviously cannot serve to demonstrate probable cause for the two challenged locations, nevertheless it can serve as an indication of the protracted and continuous nature of the operations under investigation, *cf. United States* v. *Johnson*, 461 F.2d 285, 287 (10th Cir. 1972); *Durham* v. *United States*, 403 F.2d 190, 194-95 & n.7 (9th Cir. 1968), and in conjunction with the recitation of numerous intercepted calls to the two locations, can serve to demonstrate the probability of a continuing violation. Under these circumstances we believe the court below reasonably concluded that the gambling enterprise which functioned in June had remained operative in November, and we do not disturb its finding as to probable cause.

Appellants Colangelo, DiMuro, Lung and Santarpio, who were named in the original indictment, contend that they were deprived of their sixth amendment right to a speedy trial because of a thirty-three month delay between the initial indictment in September, 1972 and the commencement of trial in May, 1975 (the second indictment having been

returned in August, 1974).[23] This claim cannot prevail, however, when considered in light of the factors set forth by the Supreme Court in *Barker* v. *Wingo*, 407 U.S. 514, 530-33 (1972). *See United States* v. *Morse*, 491 F.2d 149, 156-57 (1st Cir. 1974); *United States* v. *Cabral*, 475 F.2d 715 (1st Cir. 1973); *see also United States* v. *Fay*, 505 F.2d 1037 (1st Cir. 1974). Prior to trial on the initial indictment appellants moved to dismiss and to suppress all evidence derived pursuant to allegedly illegal wire interceptions. As noted earlier, on April 19, 1973, the magistrate entered an order — to which all defendants consented, including the appellants who now complain of delay — staying all proceedings pending the decision by the Supreme Court in *United States* v. *Giordano, supra*. As a result of the Court's decision the initial indictment was dismissed without prejudice and the government obtained a superseding indictment in August, 1974. Under these circumstances it is clear the delay in question was not initiated by the government "to gain some tactical advantage over [the appellants] or to harrass them," *United States* v. *Marion*, 404 U.S. 307, 325 (1971), nor was the thirty-three month interval a "deliberate attempt to delay the trial in order to hamper the defense. . . ." *Barker* v. *Wingo, supra* at 531. The trial on the original indictment was delayed for a wholly legitimate purpose — to avoid the cost and ordeal of a trial on the basis of evidence which subsequently might have been (and was) declared inadmissible. Moreover, the appellants, who were released on bail during the pendency of any indictment against them, consented to the stay. Appellants also have shown no prejudice from the delay, nor have they demonstrated that their defense was injured. Accordingly, we

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[23] Appellants seem to contend that it was improper for the government to seek a second indictment. This claim, however, lacks merit. *De Marrias* v. *United States*, 487 F.2d 19, 21 (8th Cir. 1973), *cert. denied*, 415 U.S. 980 (1974).

find no violation of the right to a speedy trial.[24]

Appellants also contend the trial judge erred in denying their motions to dismiss. Specifically, they claim that the indictment returned by the grand jury was invalid because the letter of authority assigning Jeffrey M. Johnson, an attorney in the Organized Crime and Racketeering ("Strike Force") Section of the Department of Justice, to assist in federal prosecutions in the District of Massachusetts, failed to comply with the requirement of 28 U.S.C. § 515(a) (1970) that any special attorney be "specially directed" to carry out particular legal proceedings. We have, however, recently rejected just such a contention and do so here in reliance on our earlier opinion. *United States* v. *Morrison*, 531 F.2d 1089 (1st Cir. 1976).

Appellant Mantica claims that the indictment against him cannot stand because he was previously immunized from prosecution. He points to the fact that he was subpoenaed to appear before a special grand jury on February 2, 1972, which was inquiring into possible violations of § 1955. At that time he invoked his fifth amendment privilege against self-incrimination and refused to answer questions. On February 9 the government obtained an order compelling Mantica to testify under a grant of transactional immunity pursuant to 18 U.S.C. § 2514.[25] Mantica again appeared,

[24] Other of the appellants who were not named in the original indictment claim that the government deprived them of due process of law under the fifth amendment by waiting until August 22, 1974, to indict them for illegal conduct occurring between June and November, 1971. However, this claim cannot avail. Appellants have failed to demonstrate that the pre-indictment delay was intentional or designed to give the government a tactical advantage. Moreover, they have not shown any actual prejudice stemming from the pre-accusation delay. *See United States* v. *White*, 470 F.2d 170, 174-75 (7th Cir. 1972); *United States* v. *Daley*, 454 F.2d 505, 508 (1st Cir. 1972). Accordingly, we find no violation of due process. *See United States* v. *McClure*, 473 F.2d 81, 83 (D.C. Cir. 1972); *United States* v. *Deutsch*, 440 F.2d 651, 652 (7th Cir. 1971), *cert. denied*, 404 U.S. 1014 (1972).

[25] Section 2514 provided in pertinent part:
"No such witness shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, nor shall testimony so compelled be used as evidence in any criminal proceeding . . . against him in any court."
It was subsequently repealed. *See* Pub. L. No. 91-452, Title II, § 227(a), 84 Stat. 930.

refused to testify and was held in contempt by the district court; in an unpublished order we affirmed that judgment. Despite the fact that he never actually testified, Mantica nevertheless contends that the grant of immunity continued in effect. We find no merit to this claim. A grant of immunity is coextensive with the privilege against self-incrimination, *see Kastigar* v. *United States*, 406 U.S. 441 (1972), and no immunity is earned until the witness in fact testifies. *Marcus* v. *United States*, 310 F.2d 143, 148 (3d Cir. 1962), *cert. denied*, 372 U.S. 944 (1963). "So long as he refuses to testify he is still subject to prosecution, if the government can make out a case against him by other evidence than his own." *Id.*

Appellants Colangelo, DiMuro and Mantica complain that the trial court erred in admitting into evidence two portions of expert testimony, viz. a computation by agent Whitcomb (based on wagering slips seized from 585 Boulevard) indictating that there were over $52,000 in wagers for a single day at that location, and the agent's analysis of Colangelo's handwriting in a notebook seized from another location. They contend that this evidence should have been excluded because the government failed to make prior disclosure of its existence or to notify defense counsel prior to the offer as required by the district court's uniform rules for automatic discovery.[26] We do not find this claim to be per-

[26] These rules provide in pertinent part:
"A. The Government shall disclose, and allow the defendant to inspect, copy and photograph, all written material as follows:
". . . .
"3. All relevant reports or results of physical or mental examinations and of all scientific tests, experiments and comparisons, or copies thereof, made in connection with a particular case.
"4. All books, papers, documents, tangible objects, buildings or places, or copies, or portions thereof, which the Government

suasive. The defense was provided with all the documents on which the computations and handwriting analysis were based. The agent's testimony concerning his calculations as to total wagers on a single day is clearly permissible, *see United States* v. *Morrison, supra* at 1094-95. The defense was informed at a pre-trial hearing that there would be expert testimony regarding handwriting, and it was not deprived of an opportunity to challenge the analysis. Under these circumstances we cannot say the district court abused its discretion in permitting this testimony. *United States* v. *Baxter*, 492 F.2d 150, 174 (9th Cir.), *cert. denied*, 414 U.S. 801 (1973); *see United States* v. *Hauff*, 473 F.2d 1350, 1355 (7th Cir.), *cert. denied*, 412 U.S. 907 (1973); *United States* v. *Saitta*, 443 F.2d 830 (5th Cir.), *cert. denied*, 404 U.S. 938 (1971).

We have examined appellants' other assignments of error and do not find them to be of merit.

Affirmed.

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intends to use at the trial of the case, except reports, memoranda and other internal government documents made by the government agents in connection with the investigation and prosecution of the case."

United States District Court

FOR THE DISTRICT OF MASSACHUSETTS.

Magistrate's Docket No. 15-1
Case No. 71-262

UNITED STATES OF AMERICA

vs.

THE PREMISES KNOWN AS
585 BOULEVARD, REVERE,
MASSACHUSETTS

AFFIDAVIT FOR SEARCH WARRANT

and described as a two-story building with basement with a brick front on the first floor and white siding above, and all persons on said premises.

BEFORE *Willie J. Davis*, UNITED STATES MAGISTRATE, Boston, Massachusetts, the undersigned being duly sworn deposes and says:

That he has reason to believe that on the premises known as 585 BOULEVARD, REVERE, MASSACHUSETTS, and described as a two-story building with basement with a brick front on the first floor and white siding above, and all persons on said premises.

(SEE PHOTOGRAPH ATTACHED HERETO)

In the District of Massachusetts there is now being concealed certain property, namely wagering paraphernalia relating to

the operation of a bookmaking gambling operation, consisting of, but not limited to, bookkeeping records, accounting sheets, rundown sheets, betting slips, recap sheets, sports information papers, sports schedules, line sheets, ledger books and sheets, line notations, financial statements, checks and check stubs, money orders, United States Currency and telephone numbers and telephones, code books and other gambling paraphernalia, which are designed or intended for use or which have been used as a means of committing a criminal offense, are the fruits of such offense and constitute evidence of such criminal offense, in violation of the laws of the United States; such criminal offense being the conducting, financing, managing, supervising, directing and owning all or part of an illegal gambling business in violation of Title 18, United States Code, Sections 1955 and 371.

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows:

(SEE AFFIDAVITS OF SPECIAL AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION ATTACHED TO THE AFFIDAVIT FOR SEARCH WARRANT AND FILED IN MAGISTRATE'S CASE NO. ____, DOCKET NO. ____, INCORPORATED HEREIN AND MADE A PART HEREOF.)

ORLIN D. LUCKSTED, *Special Agent*
THOMAS J. DALY, *Special Agent*
Federal Bureau of Investigation

THOMAS E. CARNEY, *Special Agent*
THOMAS H. SULLIVAN, *Special Agent*
Federal Bureau of Investigation

JOHN F. JENSON, *Special Agent*
JAMES H. VARLIS, *Special Agent*
Federal Bureau of Investigation

Sworn to before me, and subscribed in my presence, November 12th, 1971

WILLIE J. DAVIS
United States Magistrate.

AFFIDAVIT

I, Orlin D. Lucksted, Special Agent of the Federal Bureau of Investigation, being duly sworn, do on oath depose and say:

1. I am a Special Agent of the Federal Bureau of Investigation and have continuously held that position for the past seven and a half years. I have been assigned to the investigation of gambling matters within the jurisdiction of the Federal Bureau of Investigation for approximately two and a half years, and during that time have been involved in more than one hundred separate and distinct investigations in the Greater Boston area. I have participated during this time in the arrest of bookmakers and the preparation and execution of more than twenty search warrants on persons involved in, or premises used in, illegal gambling operations. I have also conducted and supervised the conducting of wire interceptions, by court orders, of persons engaged in illegal gambling operations.

As a result of this experience, I have had the opportunity to talk with, observe, interview and interrogate bookmakers and persons associated with them, and to examine the records kept by bookmakers, bettors and other persons who have been engaged in all types of gambling activity, including wagering on numbers, sporting events, horses and dogs. I have thus familiarized myself with the operation of an illegal gambling business and the manner and means utilized by the persons engaged in the operation of such a business.

2. For the past fifteen months I have conducted an investigation to determine whether violations of the federal gambling statutes (18 U.S.C. 1952, 1955 and 371) were being committed by Harvey T. Plotkin, a/k/a Teddy, Daniel P. Shane, a/k/a Danny Shanahan, Dominic Serino, Steve LNU, Ruth Lynch, Jackie LNU and more than ten other persons associated with them in the operation of a gambling business in the Revere, Massachusetts area.

3. This affidavit and the others attached are submitted in support of applications for search warrants for premises, automobiles, and persons in order to secure means, instrumentalities and evidence of the illegal gambling business being conducted by SHANE, PLOTKIN and LYNCH and other members of this gambling operation.

4. In the course of the investigation into the above-listed persons enumerated in paragraph 2, orders were granted by the United States District Court for the District of Massachusetts authorizing the interception of wire communications from five telephones used in this gambling operation.

Pursuant to these orders, telephone calls to and from telephone number 617-289-4463, listed in the records of the New England Telephone and Telegraph Company to Joseph Glixman, 58 Delano Avenue, Revere, Massachusetts and 617-284-2175, listed in the records of the New England Telephone and Telegraph Company to Stacey Glixman, 58 Delano Avenue, Revere, Massachusetts, and both billed to Joseph Glixman, and telephone calls to and from (617-284-7545) which according to the records of the New England Telephone and Telegraph Company is listed to Robert Alpern, 63 Bickford Avenue, Revere, Massachusetts, and 617-289-5319 which according to the records of the New England Telephone and Telegraph Company is listed to Marsha Lincoff, 63 Bickford Avenue, Revere, Massachusetts and 617-289-6278, which according to the records of the New England Telephone and Telegraph Company is listed to Marsha Lincoff, 63 Bickford Avenue, Revere, Massachusetts, Basement Apartment, all billed to Robert Alpern, were intercepted during the period June 3, 1971 through and including June 15, 1971. The interception of wire communications to and from 617-289-4463 was terminated on June 7, 1971 because of the limited amount of gambling calls.

The affidavits of myself, attached thereto and made a part of the application for the above orders sets forth certain facts learned through informants to establish that Daniel P. Shane, a/k/a Daniel Patrick Shanahan, and Danny Shanahan, Harvey T. Plotkin, a/k/a Teddy Plotkin, Dominic Serino, Rita DeMarco, Steve LNU, Tudie and other individuals as yet unknown had been and were committing offenses and conspiring to commit offenses involving an illegal gambling business as defined in Title 19, United States Code, Section 1955 and that there was probable cause to believe that evidence of this business would be obtained through the interception of wire communications made over the above enumerated telephone numbers.

The affidavit also established that the persons mentioned above had been and were conducting this illegal gambling business almost continuously for a period in excess of thirty days and had a gross revenue of $2,000 or more in a single day.

5. In the course of the interceptions of the above-numbered telephones at 58 Delano Avenue and 63 Bickford Avenue, both in Revere, Massachusetts, approximately 300 calls per day pertaining to the operation of a gambling business were intercepted during the hours of 11:00 A.M. and 8:00 P.M., Monday through Saturday. On Sundays a limited number of calls were intercepted pertaining to gambling, primarily calls in which settle-up and "information" was exchanged. The conversations intercepted were between Victor Santarpio, a/k/a Vic, Harvey T. Plotkin, a/k/a Teddy, and T.T.T., Steven J. Emerson, a/k/a Steve, John Considine, Jr., a/k/a Jackie, Phyllis Franklin, a/k/a Phyllis, Bonnie Glixman, Lionel Mintzer, a/k/a Tudie, Ruth Lynch, a/k/a Ruth or Ruthie, Daniel P. Shane, a/k/a Danny, Michael Shanahan, a/k/a Mike and numerous other persons. The conversations

primarily concerned the exchange of bets and wagers on horse races and numbers and a limited number of bets on sporting events. In the conversations, the above listed people and at least thirty other agents of the operation exchanged bets and wagers, turned in bets, layed-off bets, discussed the settling-up of gambling accounts, discussed the personnel in the gambling operation and discussed the fact that law enforcement was surveilling some of their places, arranged meetings and discussed earnings of the operation. In several conversations Teddy Plotkin discussed the amount of money the gambling operation was making and how each individual agent was doing, both in amount of money that they were earning and how they were handling their operation. In other conversations, the agents indicated that only "Teddy" or "Ruthie" could make certain decisions concerning the gambling operation. Several conversations indicated that figures were given for ten, fifteen or twenty agents in one conversation. Based upon the intercepted conversations, it is estimated that this gambling enterprise has been in substantial continuous operation for more than thirty days.

The following descriptions of premises and persons are based on personal observations or observations reported to me by other agents of the Federal Bureau of Investigation.

6. *The premises known as 58 Delano Avenue, Revere, Massachusetts*, described as a one story wood frame building with basement.

A. During the period of June 3, 1971 to June 15, 1971 approximately 50 to 100 telephone calls per day pertaining to gambling were intercepted over telephone number 617-284-2175. Almost all of these interceptions identified Victor Santarpio as one of the parties to the conversation. Many of these conversations indicated either mention of gambling records which indicated the amount bet, the person or agent betting or laying-off and/or recordation of other gambling

information. The conversations also reflected that Vic Santarpio was maintaining records at this address in order to transact his gambling business. In one specific conversation Victor tells Frank how much he is to pick up from and/or pay to certain individuals.

In numerous conversations Vic reads back to the other party to the conversation, bets placed earlier in the day or preceding days by the other parties.

B. On November 9, 1971 a confidential informant, hereinafter referred to as Informant #1 in this affidavit, who is known from the files and records of the Federal Bureau of Investigation to be personally acquainted with numerous gamblers, bookmakers and bettors in the Greater Boston area and who has personal knowledge concerning gambling, gamblers and bookmakers in the Greater Boston area, and who has furnished reliable information regarding gambling, gamblers and bookmakers to me on sixty-three occasions over the past four years, which information has been subsequently verified by other confidential sources who have furnished reliable information in the past or by independent investigation by the Federal Bureau of Investigation and other law enforcement agencies and which information has led to the identification of fifty persons involved in gambling and the arrest of four persons on gambling charges (in both state and federal courts) and to the physical location of seven subjects of other investigations by the Federal Bureau of Investigation, furnished the following information to me:

(a) Informant #1 is engaged in the gambling business.

(b) Informant #1 is well acquainted with Shane and Plotkin, having known them personally for more than two years.

(c) Informant #1 has exchanged bets and wagering information with Shane and Plotkin on numerous occasions in the past, the most recent being the last week of October, 1971.

(d) Informant #1 knows through conversations and association with Shane and Plotkin that they use telephone 617-289-2175 in this gambling operation and he has discussed gambling information over this telephone.

C. A review of the Revere Police list for 1970 indicates that the four persons residing at 58 Delano Avenue, Revere, Massachusetts are James Valliro, Anna Valliro, Joseph M. Glixman, and Bonnie R. Glixman.

7. *The premises known as 63 Bickford Avenue, Revere, Massachusetts,* is described as a two-story building with basement.

A. During the period of the interceptions of 63 Bickford Avenue, Revere, Massachusetts, from June 3, 1971 through June 15, 1971, approximately 200 to 300 telephone calls per day, both incoming and outgoing, were intercepted over the telephone facilities numbered 289-5319, 289-6278 and 284-7545. The records of the New England Telephone and Telegraph Company reflect that these telephones are listed to the persons named in paragraph 4, above. The intercepted calls and the investigations indicate that Steven J. Emerson, a/k/a Steve, John Consodine, Jr., a/k/a Jackie, Phyllis Franklin, a/k/a Phyllis, Bonnie Glixman, Harvey T. Plotkin, a/k/a Teddy, Lionel Mintzer, a/k/a Tudie, and other persons were using the telephones in the above location to conduct their illegal gambling business. In many of these conversations, the parties to the conversations either mentioned gambling records which indicated the amounts bet, the person or agent betting or laying off the bet, or the recordation of other gambling information. In a specific conversation, a caller to 289-5319 requested the person answering to start with a "two-day sheet" and then to check "Ruthie's sheet" for another agent. In a separate conversation, the person operating at 63 Bickford Avenue stated he kept records for one

week. During another conversation "Jackie" indicated that he was operating in the cellar of 63 Bickford Avenue.

B. On November 9, 1971 Informant #1 told me that he knows through conversations and association with Shane and Plotkin that they use telephone 617-289-5319 in their gambling operation and he has placed bets with the person answering at this telephone as recently as the first of November, 1971.

C. A review of the police listings for the City of Revere, indicate that the following persons reside at 63 Bickford Street, Revere, Massachusetts; Robert Alpern, Marion Alpern, William R. Toppi and Nancy C. Toppi. A review of the registry of motor vehicles failed to locate any record for Marsha Lincoff at 63 Bickford Avenue, Revere, Massachusetts, but did reveal records for both Robert N. and Marion Alpern at 63 Bickford, Avenue, Revere, Massachusetts.

8. *The premises known as 1578 North Shore Road, Revere, Massachusetts,* is described as a one-story red brick faced building with large windows, completely covered by green shades; a sign "Novelties" appears over the door.

A. During the period of the interceptions of 63 Bickford Avenue, Revere, Massachusetts from June 3, 1971 through June 15, 1971, more than one ongoing call per day was made from one or more of the telephones listed to 63 Bickford Avenue, Revere, Massachusetts to 617-284-7455. The records of the New England Telephone and Telegraph Company list this number to Mossy Lynch Novelties at 1578 North Shore Road, Revere, Massachusetts. Almost all of the calls made to this number were answered by Teddy Plotkin or Ruth Lynch. Almost all of the calls intercepted pertained to the exchange of gambling information and reflected that gambling records were being maintained at this address by the person operating the gambling business. In one of the conversations intercepted, the "hits" were discussed for that day. In another

conversation "Ruth" stated she was doing the "totals" and the caller should call back later.

B. On November 9, 1971 I was advised by confidential informant #1 that:

(a) Informant #1 is well acquainted with Ruth Lynch, having known her personally for more than two years.

(b) Informant #1 is well acquainted with Shane and Plotkin and he knows from conversations and association with Lynch, Shane and Plotkin that the "Novelty Shop" is the headquarters for the bookmaking operation of Lynch and Plotkin.

(c) Informant #1 knows from his conversations and associations with Plotkin as recently as the first week of November, 1971, that Plotkin still is using the "Novelty Shop" as an office in his bookmaking operation.

C. On several occasions from June to the first week of November, 1971, a motor vehicle bearing Massachusetts Registration T.T.T. was observed parked in the vicinity of 1578 North Shore Road, Revere, Massachusetts. The records of the Registry of Motor Vehicles reflect that this registration was issued to Terri Anne Plotkin, 85 Whitin in Revere, Massachusetts. I know from my investigation and reports made to me by other agents that this is the same address as Harvey T. Plotkin, a/k/a Teddy and I have learned that Terri Anne is the wife of Harvey T. Plotkin and the daughter of Ruth Lynch.

9. *The premises known as 243 Cushman Avenue, Revere, Massachusetts,* is described as a white ranch house with a one car attached garage.

A. During the period of the interceptions of 63 Bickford Avenue, Revere, Massachusetts from June 3, 1971 through June 15, 1971, approximately 41 outgoing telephone calls were made to telephone 289-7322. The first call being made on June 3, 1971 and the last on June 15, 1971. The records of

the New England Telephone and Telegraph Company list this number to Ronald Novak, 243 Cushman Avenue, Revere, Massachusetts. All of the telephone conversations intercepted pertained to the exchange of gambling information primarily the laying off of large number bets. Several calls indicate that the persons operating at this address maintain records of the bets placed with them. Several other conversations indicated that "6-day number play bets" or "steadies" were placed. On many occasions, the person answering the telephone at 289-7322 was identified as "Dave."

B. On several occasions over the past several months and as recently as November 10, 1971, a vehicle bearing Massachusetts Registration 312-925 has been observed parked in the vicinity of 243 Cushman Avenue, Revere, Massachusetts during the hours of 11:00 A.M. to 3:00 P.M.

Records of the Registry of Motor Vehicles list this vehicle to David Sherman of 30 Alden Road, Swampscott, Massachusetts.

10. *The premises known as 585 Boulevard, Revere, Massachusetts,* is described as a two-story building with basement with a brick front on the first floor and white siding above.

A. During the course of the interceptions of 58 Delano Avenue, Revere, Massachusetts, from June 3, 1971 through and including June 15, 1971 telephone numbers 284-2163 and 284-6712 were called at least thirty times, the first call being on June 3, 1971 and the last being on June 15, 1971. The records of the New England Telephone and Telegraph Company indicate that 284-2163 is listed to Carol Golder, and 284-6712 is listed to Michael Golder. Almost all of the conversations intercepted pertained to the exchange of gambling information, primarily the obtaining of horse results. Several of the conversations indicated that the persons operating at this telephone were maintaining records in order to supply

gambling information. The persons answering this telephone were identified as "Tommy" and "Jimmie" and others. In one specific conversation, "Jimmie" gave results to "Vic" on horse races from four to five race tracks then operating in Massachusetts, New York and New Jersey and then proceeded to give him information concerning a particular race at Monmouth.

11. *The premises known as 23A Tyler Street, Boston, Massachusetts*, described as a basement entrance below 23 Tyler Street, with a light pine door with Chinese lettering leading into a small foyer.

A. During the period of the interceptions from June 3, 1971 through June 15, 1971, numerous telephone calls were intercepted from 58 Delano Avenue, Revere, Massachusetts to telephone numbers 338-7221 and 482-6871. The records of the New England Telephone and Telegraph Company indicate that these numbers are listed to Wing Lea Club, 23A Tyler Street, Boston, Massachusetts. All of these calls pertain to the transacting of gambling business, such as the turning in of horse bets, dog bets, some sports bets, the obtaining of results and the settling of accounts. Many of the calls were answered by a person identified through conversations and investigation as Roland Lung. Other persons answering the telephone at this address were identified by first name or nick names. Many of the conversations indicated the existence of gambling records being maintained at this address by Roland Lung and other persons. In a specific conversation they review all their gambling figures in order to determine the correct balance due.

12. *The premises known as 38 Graves Road, Revere, Massachusetts*, is described as a private home, split level, with tan shingles with white trim.

A. During the period of the interceptions from June 3, 1971 to June 15, 1971, four outgoing telephone calls were made from 63 Bickford Avenue, Revere, Massachusetts to telephone 284-6919. The records of the New England Telephone and Telegraph Company list this number to John Moccia, 38 Graves Road, Revere, Massachusetts. The person answering this telephone identified himself as "Jake." All of the calls intercepted pertained to the transacting of gambling business, such as the exchange of number bets and the settlement of accounts. In one conversation "Jake" went through the "6-day" envelope and stated he could not find a slip containing a questioned bet. He states he was going to talk to "Teddy" about it. In another conversation, "Teddy" calls "Jake" and they discuss number bets and differences in their calculations. These conversations indicate that "Jake" keeps and maintains records at 38 Graves Road, Revere, Massachusetts, relating to gambling.

13. *The premises known as 40 Kingman Avenue, Revere, Massachusetts*, is described as two-story multi-family dwelling, aluminum siding, with three entrances — one on the front facing Kingman Avenue, one on the side and one in the rear — with a fifty-foot driveway on the right hand side of the residence leading to a parking area in the rear.

A. During the period June 3, 1971 to June 15, 1971 four outgoing telephone calls to telephone number 284-7565 from 63 Bickford Avenue, Revere, Massachusetts, were intercepted. The records of the New England Telephone and Telegraph Company indicate that this number is listed to Dominic Faccadio at 40 Kingman Avenue, Revere, Massachusetts. All of the calls pertained to the transacting of gambling business, primarily the laying off of number bets.

14. *The premises known as 68 Whitin Avenue, Revere, Massachusetts*, is described as a one-story ranch brown in color.

A. During the period of the interceptions from June 3, 1971 to June 15, 1971, at least seven outgoing telephone calls to telephone numbers 284-4588 and 289-0487 were made from 63 Bickford Avenue, Revere, Massachusetts. The records of the New England Telephone and Telegraph Company indicate that 284-4588 is listed to Wendi Plotkin of 68 Whitin Avenue, Revere, Massachusetts and 289-0487 is listed to Arthur Plotkin of 68 Whitin Avenue, Revere, Massachusetts. In several of the telephone calls there is an exchange of gambling information.

15. *The premises known as 85 Willow Street, Malden, Massachusetts*, described as the Malden Davenport Associates, Incorporated.

A. During the period of the interceptions from June 3, 1971 to June 15, 1971, two outgoing telephone calls were made to 324-4490, which the records of the New England Telephone and Telegraph Company reflect is listed to the Malden Davenport Associates at 85 Willow Street, Malden, Massachusetts. On one conversation on June 12, 1971 Jackie tells "Harry," who answered at 324-4490, to write down a few "Hits." The other conversation intercepted pertained to the amount of pay-off on a number and "Julie" answered the telephone on this occasion.

16. *The premises known as 120 Lynnway, Revere, Massachusetts*, described as a split level with a lamp post in front with a sign bearing the numerals "120 Lynnway" and a large stone chimney beside the front door.

A. During the period of the interceptions from June 3, 1971 to June 15, 1971, more than ten outgoing calls to 284-2089 were intercepted on various days from 63 Bickford Avenue, Revere, Massachusetts and 58 Delano Avenue, Revere, Massachusetts; the last call occurring on June 15, 1971. The records of the New England Telephone and Telegraph Company indicate that 284-2089 is listed to Ruth

Lynch at 120 Lynnway, Revere, Massachusetts. All of the intercepted calls pertain to the operation of an illegal gambling business. The party to the conversations discuss figures, settle up of agents of the operation and other gambling information. In one conversation Ruth Lynch states she is "going to do the books" and in another conversation Ruth is told about Jeannie's owing another $20.00 for horses and Ruth is told it's not in her total. Ruth then states she will put it on the "NCO's and other hits." In several of the conversations it is indicated that Ruth Lynch keeps and maintains records concerning the operation of an illegal gambling business at this address.

B. Informant #1 further states that he knows from conversations and association with Ruth Lynch as recently as the first week of November, 1971, that she is still conducting a gambling business in the Revere, Massachusetts area.

(a) Informant #1 further advised that he had been advised by people associated with Ruth Lynch in the operation of gambling business that Ruth is number one in their operation and is supposed to have a large amount of cash available to her to pay off any substantial loss incurred by her organization.

17. *The premises known as 85 Whitin Avenue, Revere, Massachusetts,* described as a two story brick structure with a two car garage.

A. During the period of the interceptions from June 3, 1971 to June 15, 1971, several outgoing telephone calls were made to telephone numbers 284-6605 and 284-0763, from 63 Bickford Avenue, Revere, Massachusetts; the last such call being made on 6/15/71. The records of the New England Telephone and Telegraph Company indicate that 284-6605 is listed to Todd Plotkin, 85 Whitin Avenue, Revere, Massachusetts and 284-0763 is listed to Ted Plotkin at 85 Whitin

Avenue, Revere, Massachusetts. Investigation by the Federal Bureau of Investigation indicates that this address is the home of Harvey T. Plotkin also known as Teddy Plotkin. In one conversation to 284-0763 Teddy asked "Terri" to look for a "tape" in his study. In another conversation there is discussion of the fact that four or five offices are "hot" and new locations will have to be found. In another conversation the person answering at 284-0763 is told about a $6,000 bet and how much the bettor owes for the day.

B. Informant #1 further stated that he had been furnished number 284-6603 in the past to call Teddy Plotkin if he could not reach anyone at the "office."

(a) Informant #1 has been told by associates in the Shane and Plotkin operation as recently as the last week of October, 1971, he could still reach Teddy at this number if there was a need.

18. *The premises known as 141 Pleasant Street, Apartment F, Melrose, Massachusetts*, described as a three story red brick building containing numerous apartments in a building known as Hanover House.

A. During the period of the interceptions from June 3, 1971 through June 15, 1971, more than ten calls to telephone 662-8736 were intercepted from 63 Bickford Avenue; the last call intercepted being on June 15, 1971. The records of the New England Telephone and Telegraph Company list 662-8736 to Samuel T. Melling, 141 Pleasant Street, Melrose, Massachusetts. Most of the intercepted calls pertain to the operation of a gambling business, primarily the exchange of horse bets and a discussion of "hits." Several of the conversations indicate that the person operating at this telephone listed to 141 Pleasant Street, Apartment F, Melrose, Massachusetts, keeps and maintains records of the bets placed with him. The person answering the telephone at this address was identified as "Sam."

19. *The premises known as 475 Ferry Street, Malden, Massachusetts*, described as a one story framed building with a sign reading "Belmont Grill" in front.

A. During the period of the interceptions, from June 3, 1971 to June 15, 1971, three outgoing telephone calls to telephone 324-9540 were intercepted from 63 Bickford Avenue, the records of the New England Telephone and Telegraph Company reflect that 324-9540 is listed to the public pay telephone at the Belmont Grill at 475 Ferry Street, Malden, Massachusetts. All of the completed calls intercepted pertained to the exchange of number bets. The calls also indicate that the persons turning the number bets in from Belmont Grill keep and maintain records.

B. On October 29, 1971 a Special Agent of the Federal Bureau of Investigation entered the premises at 475 Ferry Street at approximately 3:30 P.M. and observed gambling paraphernalia on the premises. He also observed the bartender maintaining a sheet on which it appeared that number play was recorded. He also heard the bartender engage in a discussion regarding horse races and numbers.

Based on the facts set forth in this affidavit and the affidavits of the other Special Agents submitted in connection with this affidavit, I have reason to believe that gambling records and paraphernalia are being used and are being kept by the persons listed below and on the premises listed below and other persons unidentified to conduct, finance, manage, finance, supervise and direct an illegal gambling business, in violation of Title 18, United States Code, Sections 1955 and 371.

Wherefore, your affiant respectfully submits that, based upon the totality of the information submitted herewith, there is probable cause to believe that fruits, instrumentalities and evidence of an illegal gambling operation will be found on the premises, persons and vehicles listed below.

1. 58 Delano Avenue, Revere, Massachusetts, and all persons on said premises;

2. 63 Bickford Avenue, Revere, Massachusetts, and all persons on said premises;

3. 1578 North Shore Road, Revere, Massachusetts, and all persons on said premises;

4. 243 Cushman Avenue, Revere, Massachusetts, and all persons on said premises;

5. 585 Boulevard, Revere, Massachusetts, and all persons on said premises;

6. 23A Tyler Street, Boston, Massachusetts, and all persons on said premises;

7. 38 Graves Road, Revere, Massachusetts, and all persons on said premises;

8. 40 Kingman Avenue, Revere, Massachusetts, and all persons on said premises;

9. 68 Whitin Avenue, Revere, Massachusetts, and all persons on said premises;

10. 85 Willow Street, Malden, Massachusetts, and all persons on said premises;

11. 120 Lynnway, Revere, Massachusetts, and all persons on said premises;

12. 85 Whitin Avenue, Revere, Massachusetts, and all persons on said premises;

13. 141 Pleasant Street, Apartment F, Melrose, Massachusetts, and all persons on said premises;

14. 475 Ferry Street, Malden, Massachusetts, and all persons on said premises.

Your affiant hereby requests that a warrant to search the above-described persons and premises for means, instrumentalities and evidence of violations of Title 18, United States Code, Sections 1955 and 371 be issued.

ORLIN D. LUCKSTED,
Special Agent, Federal Bureau of Investigation